

13 means for telescopically adjusting the length of each respective side rail and said toe board enabling said temporary guardrail system to be adapted to dimensional features of different buildings under construction; and

means for selectively extending the vertical height of said guardrail system to provide an increased measure of safety for employees performing specialized tasks requiring ladders and stilts adjacent thereto.

Cancel Claims 2, ~~3~~, and 4.

In Claim 5, line 1, change "4" to --1--.

In Claim 12, line 4, change "plate" to --anchoring--.

REMARKS

This Application has been reconsidered in light of the Office Action dated August 28, 1997, and the references cited therein. Applicant hereby requests further examination and nominal reconsideration of the Application in view of the foregoing amendments after Final Action.

Allowable Subject Matter

Applicant acknowledges with appreciation that Claims 4, 5, 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if re-written in independent form including all of the limitations of the base claim and any intervening claims.

Accordingly, Applicant has re-written Claim 1 (Twice Amended) to include the patentable limitations of Claim 4 and the intervening Claims 2 and 3 to place Claim 1 (Twice Amended) in condition for allowance.

Drawings

Applicant acknowledges with appreciation that the proposed drawing corrections filed on June 9, 1997 have been approved.

Claim Rejections - 35 U.S.C. § 112

Claim 12 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

The appropriate paragraph of the Office Action dated August 28, 1997 setting forth the basis for this rejection is as follows:

As concerns Claim 12, "ground plate means" does not conform to 35 U.S.C. 112, 6th paragraph and should be changed to --ground anchoring means-- for consistency with the other claims.

Accordingly, Applicant has amended Claim 12 to include the term "ground anchoring means" for consistency with the other claims as so kindly suggested by the Examiner.

Claim Rejections - 35 U.S.C. § 103

Claims 1-3, 6, and 9-14 stand provisionally rejected under 35 U.S.C. 103 (a) as being obvious over co-pending Application No. 08/755,596, which has a common inventor with the instant application, in view of Lamb 2,136,696, Bourn et al. and Stewart, Jr.

The appropriate paragraphs of the Office Action dated August 28, 1997 setting forth the basis for these rejections are as follows:

Application No. 08/755,596 discloses the claimed invention, but lacks a toe board, a means for extending the vertical height of the guardrail system, and a ground anchoring means.

Lamb teaches the use of a telescopically adjustable toe board. It would have been obvious to a person having ordinary skill in the art at the time of Applicant's invention to modify the guard rail system to have a telescopically adjustable toe board in view of Lamb '696 in order to provide a means to protect objects from rolling off a staircase or balcony where the guard rail system is installed and to allow

adjustability of the toe board in the same manner as the side rails, i.e., telescoping capability.

Bourn et al. teaches the use of a means for extending the vertical height of a guardrail system. It would have been obvious to a person having ordinary skill in the art at the time of Applicant's invention to modify the guard rail system to have a means for extending the vertical height thereof in view of Bourn et al. in order to provide a more versatile guard rail system which can be adjusted vertically based on the site circumstances, height of workers, etc.

Stewart, Jr. shows a ground anchoring means (that portion of plate 12 which connects with 13; the other portion of 12 being considered as the anchor bracket). It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the guard rail system to have a ground anchoring means in view of Stewart, Jr. in order to provide a more stable connection to the ground surface.

Based upon the earlier effective U.S. filing date of the copending application, it would constitute prior art under 35 U.S.C. 102(e) if patented. This provisional rejection under 35 U.S.C. 103(a) is based upon a presumption of future patenting of the conflicting application.

This provisional rejection might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the copending application was derived from the inventor of this application and is thus not the invention "by another," or by a showing of a date of invention for the instant application prior to the effective U.S. filing date of the copending application under 37 CFR 1.131.

With regard to rejection of Claims 1-3, 6, and 9-14 under 35 U.S.C. 103(a), Applicant has incorporated the patentable limitations of Claim 4 together with the intervening Claims 2 and 3 into Claim 1 (Twice Amended) to overcome the 102(e)/103 rejection.

For all the reasons given above, Applicant respectfully submits that the claims of the present invention, as amended, are of patentable merit under 35 U.S.C. § 103 in light of the foregoing amendments.

Accordingly, Applicant respectfully submits that the Application is now in full condition for allowance. Reconsideration and withdrawal of the rejections is requested.

Respectfully submitted,



~~Clifford E. Rey~~ J. G. MILES

Patent Attorney 20,563

Registration No. 37,920

(919) 554-4200

JGM:erw

**Amendment After Final Action Under 37 CFR § 1.116
Serial No. 08/620,211 Filing Date - 3/29/1996**

CERTIFICATE OF MAILING

I hereby certify that this document is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Assistant Commissioner for Patents
Washington, D.C. 20231

on 11/26/97
Date

Typed or printed name of person signing this certificate

Clifford E. Rey J. G. MILES

Signature: 